IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

Crl.MC.No. 3603 of 2007()

CRIME NO. 526/05 OF KONDOTTY POLICE STATION
CC.84/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES), MANJERI

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PETITIONER:

NOORUL HAQ, S/O.HYDRU,"THURAKKAL HOUSE",
RANDATHANI,ERNAD TALUK,MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH

RESPONDENTS:
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1. SUHANA P,D/O.KHALID PANDIKASHALA,
'VAYALORAM HOUSE',KODANGAD,NEDIYIRUPPU,ERNAD TALUK
MALAPPURAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3603 of 2007

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Dated this the 18th day of December, 2007

O R D E R

The petitioner was the first accused in a crime registered for offences punishable under Section 498A and 406 r/w. 34 I.P.C. Altogether there were five accused persons. The proceedings were initiated on the basis of a private complaint filed by the defacto complainant/first respondent herein - wife of the petitioner herein. The allegation was that the petitioner and his relatives (A2 to A5) were guilty of matrimonial cruelty of the culpable variety against the defacto complainant. Final report was filed. Cognizance was taken of offences punishable under Sections 498A and 406 I.P.C. against all the accused persons. The petitioner was employed abroad. He was not available for trial. Trial against the co-accused i.e. A2 to A5, proceeded. They were found not guilty and acquitted. The case against the petitioner was split up and refiled.

2. The petitioner has now come before this Court with a request that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings surviving against him. It is submitted that the petitioner and the first respondent have settled all their disputes. There has been a proper divorce effected already. All the monetary claims have been settled. Annex.A3 is the document evidencing such settlement of disputes and composition of the offences alleged. The first respondent has made it clear even when she was examined on oath as PW1 in the prosecution against the co-accused that she has no grievance against any of the accused persons. In these circumstances it is prayed that the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. may be invoked to quash the proceedings against the petitioner.

3. The learned counsel for the petitioner submits that in the peculiar facts and circumstances of this case, the petitioner is not able to ensure appearance of the first respondent. She is already married. She is living with her present husband. In these circumstances the counsel expresses helplessness to procure the presence of the first respondent to report composition.

4. Notice was given to the learned Prosecutor. The learned Prosecutor submits that the Investigating Officer was directed to verify details and record the statement of the first respondent. Such statement has been recorded. It is reported that the matter has been settled completely and the first respondent has no surviving grievance against the petitioner herein. She has compounded the offences allegedly committed by the petitioner herein.

5. From the submissions made at the Bar by the learned counsel for the petitioner, Annex.A3 document produced by the petitioner, Annex.A4 deposition of the first respondent before the Magistrate as also from the submissions made by the learned Prosecutor, I am satisfied that the petitioner and the first respondent have settled their disputes and the first respondent has compounded the offences allegedly committed by the petitioner. If legally permissible, I am satisfied that the composition can be accepted and the proceedings can be brought to premature termination.

3. The offence under Section 498A I.P.C. is not legally compoundable and the composition cannot be accepted under Section

320 Cr.P.C. But the learned counsel for the petitioner relies on the decision in **B.S. Joshi** v. **State of Haryana** (AIR 2003 SC 1386). The said decision is authority for the proposition that at times the interests of justice may transcend the interests of mere law and in such circumstances the provisions of Section 320 Cr.P.C. cannot be reckoned as a fetter on the sweeping powers of the Court under Section 482 Cr.P.C. to act in aid of justice. I am satisfied that this is an eminently fit case where the powers under Section 482 Cr.P.C. with the help of the dictum in **B.S. Joshi** can be invoked and the proceedings against the petitioners brought to premature termination.

4. This Crl.M.C. is hence allowed. C.C. No. 84 of 2007, pending before the Judicial First Class Magistrate-II, Manjeri (Forest Offences) against the petitioner herein is hereby quashed.

(R. BASANT)
Judge

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